

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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COURTNEY MOTLEY,

Petitioner,

v.

STATE OF NEVADA, *et. al.*,

Respondents.

Case No. 3:20-cv-00283-MMD-WGC

ORDER

Petitioner Motley has filed a motion for leave to proceed *in forma pauperis* and a financial certificate (ECF No. 1) which shows that he is unable to pay the filing fee of \$5.00 required to initiate this action. Accordingly, his motion for leave to proceed *in forma pauperis* is be granted.

Petitioner has submitted to the Court a pleading styled as a “motion for jail time credits,” with which he appears to be seeking to challenge an alleged failure by the Nevada Department of Corrections (“NDOC”) to apply credit for time served to his sentence. (ECF No. 1-1.) Petitioner’s avenue for relief in this Court, if any, would be a petition for writ of habeas corpus under 28 U.S.C. § 2254. Having reviewed Petitioner’s submission, the Court will dismiss this action for the following reasons.

First, a petition for writ of habeas corpus filed by a person who is not represented by an attorney must be on the correct form. See LSR 3-1. Petitioner has used the form used to bring a motion under 28 U.S.C. § 2255, which used by *federal* prisoners seeking to challenge their sentence. Petitioner is a prisoner of the State of Nevada.

Second, Petitioner has a proceeding pending in this Court in which he has filed an “amended petition,” which is drafted on the proper form and seeks relief based on the same or a very similar ground. See *Motley v. Gittere*, 3:20-cv-00326-RCJ-CLB (ECF

No. 6). Thus, this proceeding is duplicative.

Third, Petitioner's "motion for jail time credits" does not allege a violation of federal law. To obtain the relief he seeks in this Court he must establish that he "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

Fourth, Petitioner has named the "State of Nevada" as the Respondent. His pleading indicates that Petitioner is incarcerated at Ely State Prison. The Court is informed and believes that the warden at that facility is William Gittere. When a prisoner files an action seeking federal habeas relief, "the prisoner must name the warden of the penitentiary where he is confined as a respondent." *Allen v. State of Oregon*, 153 F.3d 1046, 1050 (9th Cir. 1998) (internal quotations omitted). "Failure to name the petitioner's custodian as a respondent deprives federal courts of personal jurisdiction." *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994).

It is therefore ordered that Petitioner's motion for leave to proceed *in forma pauperis* (ECF No. 1) is granted. The Clerk will file the "motion for jail time credits" and attachments, currently in the docket at ECF Nos. 1-1, 1-2, and 1-3.

It is further ordered that this action is dismissed without prejudice. The Clerk will enter judgment accordingly and administratively close this case.

It is further ordered that a certificate of appealability is denied, as jurists of reason would not find the Court's dismissal of this action without prejudice to be debatable or incorrect.

It is further ordered that that the Clerk will add Aaron Ford, Attorney General for the State of Nevada, as counsel for Respondents.

It is further ordered that the Clerk will electronically serve upon Respondents a copy of this order. No response is necessary.

DATED THIS 26th day of August 2020.



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE